IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.9251 of 2006

DATE OF DECISION: 9.10.2006

Harvinder Kaur ....Petitioner.

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr.Kapil Kakkar, Advocate for the petitioner.

Mr. Ashok Aggarwal, Addl.A.G. Punjab and
Mr. B.S. Chahal, AAG Punjab,
respondents No.1 to 3.

J.S. Khehar, J. (oral)

The petitioner, who is stated to be holding the post of Child Development and Project Officer, was transferred from Machhiwara in district Ludhiana to Dehlon in district Ludhiana vide an order dated 15.5.2006. Consequent upon the passing of the aforesaid order, the petitioner submitted a joining report at Dehlon in district Ludhiana on 17.5.2006. Within 14 days of her assuming the duties at Dehlon in district Ludhiana, the petitioner was again transferred from Dehlon in district Ludhiana to Sherpur in district Sangrur. Through the instant writ petition, the petitioner has impugned the order dated 31.5.2006 (Annexure P3) whereby she has been transferred from district Ludhiana to district Sangrur.

While issuing notice of motion, this Court, by its order dated 6.6.2006, stayed the operation of the transfer order of the petitioner. The

interim order passed on the aforesaid date has continued to operate during the pendency of the present writ petition. It is, thus, apparent that the petitioner has continued to discharge her duties at Dehlon in district Ludhiana, despite the issuance of the impugned transfer order dated 31.5.2006.

After the issuance of notice of motion, a joint written statement was filed on behalf of the respondents. The respondents have relied on the provisions of the Punjab Civil Service (General and Common conditions of Service) Rules, 1994, in order to assert that the petitioner can be transferred not only within the service to which she has been appointed, but also otherwise. The respondents have also relied upon the rule whereunder it has been provided that the petitioner can also be transferred beyond the State of Punjab. During the course of hearing, learned counsel for the respondents placed reliance on the judgment rendered by the Apex Court in State of U.P. and others V. Gobardhan lal, AIR 2004 SC 2165. Learned counsel for the respondents has placed pointed reliance on the following observation recorded by the Apex Court:-

> "8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory

> provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. this Court has often reiterated that the order of transfer made in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

A perusal of the observations rendered by the Apex Court in the judgment relied upon by the respondents would indicate, that the competent authority has an unassailable right to transfer an employee in public interest. It is also apparent that a transfer can be made by the competent authority, which is based on exigencies of service, as long as the employee in question is not adversely affected and there is no infraction of his career prospects and/or seniority on account of the aforesaid transfer.

Having examined the totality of the facts and circumstances of this case, we considered it just and appropriate to require learned counsel for the respondents to point out the public interest and/or exigency in service which necessitated the transfer of the petitioner from Dehlon in district Ludhiana to Sherpur in district Sangrur 14 days after she had assumed her charge in district Ludhiana. Learned counsel for the respondents could not invite our attention to any factual narration on that aspect of the matter, emerging from the written statement filed on behalf of the respondents. Thus viewed, it is inevitable for us to conclude that there was neither any public interest nor any administrative exigency to transfer the petitioner from Dehlon in district Ludhiana to Sherpur in district Sangrur, except for the personal request made by all others transferred by the impugned order dated 31.5.2006. In the facts and circumstances of this case, it is also inevitable for us to conclude that the instant transfer of the petitioner must be described as arbitrary and without application of mind.

For the reasons recorded above, the impugned order of transfer dated 31.5.2006 (Annexure P4) is hereby set aside.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

October 09, 2006.
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